

Jeri Walter

From: zach bergan [zbergan@gmail.com]
Sent: Friday, May 13, 2011 4:28 PM
To: Jeri Walter
Subject: June 1st Board Meeting and Update

Nevada State Board of Pharmacy,

I am writing to request an appearance by phone at the June 1st 2011 board meeting to re-evaluate activating my Nevada pharmacist license.

We last met in January of 2010 to discuss a plan for reinstatement of my Pharmacy license. At that time the board discussed what would be required for me to be reinstated and transfer my license to the state of Connecticut where I have resided since October of 2007.

In the past 18 months I have continued to work for FedEx as a delivery driver and have maintained my own residence. In September of 2010 I was married and became a step-father, officially, to Alexis' daughter Emma. Our family is excited that we are expecting a baby on May 13th. The pending arrival of our baby has brought us a lot of joy but has been difficult as Alexis has been medically required to be on bed rest for most of the pregnancy. We feel, as a family, that we are successful in most areas but the reality is that we are struggling financially because of my modest salary, approximately \$25,000 / year, and lack of health benefits.

Since my January 2010 Board appearance I have attended weekly meetings of the Connecticut Pharmacists Concerned for Pharmacists Recovery Group which is a 12 step based pharmacist recovery group. Since May 2010 I have been participating in drug testing through the Connecticut Pharmacist's Association. My participation in this program was difficult to establish because my license is still technically in Nevada's jurisdiction. I have records for the random drug tests and maintain contact with the testing coordinator but have no direct link to the Connecticut Commission of Pharmacy and will not until my license is available for transfer. Additionally, I have completed 45 hours of Continuing Education credits.

My goal is to have my license available for transfer to Connecticut, become an official part of Connecticut's probationary program and practice solely in this state. However, Connecticut is unwilling to discuss any details or options until my license is reinstated in Nevada. Once that step is completed I may still have to resubmit my application for transfer even though it was completed in March 2008.

Since I left the State of Nevada and pharmacy in October 2007 I have experienced a great deal of personal growth in sobriety and in my personal life as a whole. I have done my best to provide a respectable income in replacement of a pharmacist salary but have found little to no jobs a Pharm D. can perform that does not require a license to dispense. My work has included manual labor and delivery driving for Fedex currently. I feel however that I have made a large investment in my pharmacy education and with the recovery work and life perspective I have gained, can successfully return to pharmacy safely. I am also open to returning to practice in a limited basis, i.e. long term care consulting, nuclear pharmacy where narcotic dispensing is greatly reduced or does not occur.

I want to thank you for your consideration and want to update you on the arrival of my baby girl Reese Marie Bergan who just came home from the hospital today a healthy 7lb girl. My new family is my life and a huge

part of my "higher power" It is my honor and pleasure dedicate my heart and soul to them. They are the rock of my new life and recovery and I plan to do well by them. Thank you again.

Sincerely,
Zachary William Bergan

David Katsules and Larry Espadero, PRN-PRN monitor, appeared and were sworn by President Fey prior to answering questions or offering testimony.

Mr. Katsules explained that the PRN-PRN program is the best thing he has ever done for himself. He has learned how to cope with issues he found insurmountable while he was under the influence of alcohol. Mr. Espadero affirmed that Mr. Katsules has been in the PRN-PRN program since January, 2006 and has been in compliance with his contract since Mr. Katsules came to him from Oregon. Mr. Katsules explained that he had a DUI in August, 2004 in Las Vegas. He reported this to the Oregon Board where they Ordered him into treatment and allowed him to be monitored by Mr. Espadero. Mr. Katsules explained that he is currently working in Arizona on an Indian reservation, however he would like to come home to Las Vegas and practice in Nevada. Mr. Katsules requested that he be allowed to take the NAPLEX exam for Nevada.

Board Action:

Motion: Chad Luebke moved to approve the request for Mr. Katsules to take the NAPLEX for Nevada.

Second: Beth Foster

Action: Passed Unanimously

6. Request for Pharmacist License – Reciprocal – Appearance:

Madonna Wilcox

Madonna Wilcox was notified that her application was going to expire if she did not appear at this meeting to request reciprocation. Ms. Wilcox did not appear.

Board Action:

Motion: Kam Gandhi moved to deny Ms. Wilcox's request for reciprocation.

Second: Beth Foster

Action: Passed Unanimously

JANUARY 2010 MINUTES

* 7. Request for Reinstatement of Pharmacist License – Appearance:

Zachary W. Bergan

(07-083-RPH-N)

Zach Bergan appeared and was sworn by President Fey prior to answering questions or offering testimony.

NOTE: Kirk Wentworth recused from participation in this matter as he used to employ Mr. Bergan.

Mr. Bergan provided letters of recommendation, a resume of his pharmacy accomplishments and an employment history other than pharmacy. Mr. Bergan was very open with the Board regarding his dependence on controlled substances and what he has been doing since his license was revoked in March, 2008. He indicated that he has been in Connecticut for the last two years where he has family and a support group of friends. He indicated that he would like to have his license reinstated in Connecticut however he knew he would have to reinstate in Nevada first since Connecticut paralleled the Nevada action. The Board was interested in what kind of treatment he had been in, however the paperwork was not in his file for Carolyn Cramer to reference. After discussion it was determined to table Mr. Bergan's request until he could provide proof of treatment for at least a six month period.

Board Action:

Motion: Chad Luebke moved to table Mr. Bergan's request for reinstatement until he can provide the Board with proof that he had been in a treatment program for at least six months.

Second: Mary Lau

Action: Passed Unanimously

8. Application for Out-of-State Pharmacy – Appearance:

Altius Healthcare – Prescott, AZ

Kevin Nestruck appeared and was sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer explained that Mr. Nestruck answered yes to one of the questions on the application for out of state pharmacy and is present to explain the circumstances.

Mr. Nestruck explained that he owned two or three stores in Arizona. During an inspection it was found that one of his stores failed to have a rubber spatula and a "C" stamp. The Arizona Board charged him personally as the owner with the violations rather than the responsible managing pharmacist in that particular store. Mr. Nestruck advised the Board that he is now the owner of eleven facilities and all of them are 797 compliant with no further violations found in any of his stores.

Board Action:

Motion: Keith Macdonald moved to approve the application for out of state pharmacy for Altius Healthcare.

Second: Mary Lau

Action: Passed Unanimously

2. On August 5, 2007, Mr. Bergan was arrested for failing to maintain a travel lane, DUI drugs, and possession of drugs without a prescription. The drugs Mr. Bergan was found to possess without a prescription were loose Didrex tablets found on his person at the time of arrest.

3. When Longs #125 was notified of Mr. Bergan's arrest, it did an audit of its inventory and found that an entire stock bottle of Didrex tablets was missing. Mr. Bergan had worked at Longs #125 on August 3 and 4, the two days before his arrest.

4. On August 19, 2007, Mr. Bergan was employed at HGH and was being trained by pharmacy manager David Simsek. On September 8, 2007, a pharmaceutical technician at HGH reported to Mr. Simsek that she had notice that 40 tablets of generic Norco were missing from the controlled substances safe. Mr. Simsek could not find any accounting errors and decided to check in the safe that held outdates. Mr. Simsek found 30 additional tablets of generic Norco missing from the safe. Mr. Simsek thereafter did a complete inventory of the outdates and found 40 Oxycodone 5 mg. tablets and seven morphine 15 mg. tablets missing. Mr. Simsek's practice was to prepare a DEA form 41 for the outdated drugs and to hold them separately until the Board's inspector came to Winnemucca so that the Board's inspector could destroy them.

5. Mr. Simsek had done a complete controlled substances inventory in July 2007 and had found everything to be balanced. On September 9, 2007, Mr. Simsek took an inventory of HGH's controlled substances and the inventory revealed that a total of 100 Oxycontin 5 mg. tablets, 18 carisoprodol 350 mg. tablets, and 7 alprazolam 1 mg. tablets were missing. Mr. Simsek reviewed all of HGH's records of purchased, chart orders, expired drugs, floor stock, and invoices and was not able to account for the missing drugs. The only difference in the practice of the pharmacy at HGH between the July and September inventories was the employment of Mr. Bergan.

6. Mr. Simsek was gone from the pharmacy from September 16 through 20, 2007, leaving Mr. Bergan as the pharmacist in charge. When Mr. Simsek returned to

HGH, his pharmaceutical technicians reported that Mr. Bergan had engaged in unusual behavior such as arriving late for work, long lunch hours, extremely long bathroom trips, and numerous trips outside the HGH building while on shift. Mr. Bergan also suffered from profuse sweating during the five days.

7. Mr. Simsek took another inventory when he returned on September 21, 2007. The inventory revealed an additional shortage of 190 Oxycodone 5 mg. tablets, two temazepam 30 mg. capsules, and three carisoprodol 350 mg. tablets.

8. The total controlled substances missing from HGH attributable to Mr. Bergan's unlawful removal were:

CONTROLLED SUBSTANCE	MISSING DOSAGE UNITS
Norco	70
Oxycodone 5 mg.	230
Morphine 15 mg.	7
Oxycontin 5 mg.	100
Carisoprodol 350 mg.	21
Alprazolam 1 mg.	7
Temazepam 30 mg.	2

9. Mr. Bergan filed an Answer and Notice of Defense on February 24, 2008 that was received by the Board's office on February 28, 2008. In his Answer, Mr. Bergan did not deny any of the accusations made in the Notice of Intended Action and Accusation in this matter. Mr. Bergan also indicated that the estimates of the amount of controlled substances noted in the Notice of Intended Action and Accusation attributed to him seemed accurate. Mr. Bergan also indicated that he had not worked in a pharmacy since he left HGH and that he was attending substance abuse counseling and 12-step meetings (presumably in Connecticut, where he had moved after leaving HGH).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter because Mr. Bergan is a pharmacist licensed by the Board.
2. In removing controlled substances from his employing pharmacies, namely Didrex, hydrocodone, oxycodone, morphine, Oxycontin, carisoprodol, alprazolam, and temazepam, without lawful orders therefore, Mr. Bergan violated NRS 453.336(1) and 639.210(4) and (12) and NAC 639.945(1)(h) and (i).

ORDER

Based upon the foregoing, the Board imposes the following discipline:

1. Mr. Bergan's pharmacist's license (#15889) is revoked. Mr. Bergan may not be employed in any business registered by the Board in any capacity unless and until his pharmacist's license has been reinstated.
2. Mr. Bergan shall return to the Board's Reno office his wall certificate and wallet card within 10 days of his receipt of this Order. His failure to do so will result in a fine of \$1,000 per day until the documents are received by the Board office.

Signed and effective this 3rd day of April, 2008.



Barry Boudreaux, President
Nevada State Board of Pharmacy